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10/804,555	03/19/2004	Richard R. Rabbat	073338.0151 (03-52020) FLA	7448
5073 7590 03/04/2009 BAKER BOTTS L.L.P. 2001 ROSS AVENUE SUITE 600 DALLAS, TX 75201-2980				
EXAMINER TRAN, PHUC H				
ART UNIT 2416		PAPER NUMBER		
NOTIFICATION DATE 03/04/2009		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

## Application No.

10/804,555

## Applicant(s)

RABBAT ET AL.

## Examiner

PHUC H. TRAN

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-31 is/are allowed.
- 6) ☒ Claim(s) 1,6-8,13-15,20-22,27 and 28 is/are rejected.
- 7) ☒ Claim(s) 2-5,9-12,16-19 and 23-26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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2. Claims 1,8,15,22,29,and 31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,3,4,14,27,40,41,42,53,and 54 of copending Application No. 10/804,550 in view of Karbowiak et al (4,663,748).

For claims 1,8,15,22,29,and 31, the claims 1,3,4,14,27,40,41,42,53,and 54 of copending Application No. 10/804,550 disclose a system/method comprising:

a data interface operable to receive data for transmission to a destination node (see claim 1, lines 2 of Patent '50); a buffer operable to store the data; a transmitting unit operable to couple to an optical transmission medium having a plurality of data channels and to selectively transmit optical signals on the data channels (see claim 1, lines 3-6 of Patent '50); and a controller operable to receive a token authorizing transmission on one of the data channels, to generate a transmission control message identifying the destination node and the authorized data channel, to communicate the transmission control message for receipt by the destination node, to transmit the data on the authorized data channel using the transmitting unit after communicating the transmission control message, and to communicate the token to a next node (see claim 1, lines 7-12 of Patent '50);

wherein the controller is further operable to communicate the token to the next node before transmission of the data on the authorized data channel (see claim 3, lines 1-3 of Patent '50);

wherein the controller is further operable to determine whether to delay communicating the token and to communicate the token to the next node after a delay in response to determining to delay communicating the token (see claim 4, lines 1-4 of Patent '50);

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a plurality of optical communication nodes (see claim 14, lines 1-2 of Patent '50); optical transmission media interconnecting the optical communication nodes, the optical transmission media having a plurality of data channels (see claim 14, lines 3-4 of Patent '50); and a plurality of logical tokens corresponding to the data channels (see claim 14, line 5 of Patent '50); wherein each of the optical communication nodes is operable to: receive data for transmission to a destination one of the optical communication nodes (see claim 14, lines 7-8 of Patent '50); receive one of the logical tokens (see claim 14, line 9 of Patent '50); identify one of the data channels associated with the logical token (see claim 14, line 10 of Patent '50); and transmit the data to the destination optical communication node using the identified data channel (see claim 14, lines 11-12 of Patent '50);

receiving data for transmission to a destination node (see claim 27, line 2 of Patent '50); storing the data in a buffer (see claim 27, line 3 of Patent '50); coupling to an optical transmission medium having a plurality of data channels (see claim 27, lines 4-5 of Patent '50); receiving a token authorizing transmission on one of the data channel (see claim 27, line 6 of Patent '50); generating a transmission control message identifying the destination node and the authorized data channel (see claim 27, lines 7-8 of Patent '50); communicating the transmission control message for receipt by the destination node (see claim 27, lines 9-10 of Patent '50); transmitting the data on the authorized data channel after communicating the transmission control message; and communicating the token to a next node (see claim 27, lines 11-13 of Patent '50);

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further operable when executed to communicate the token to the next node before transmitting the data on the authorized data channel (see claim 29, lines 1-2 of Patent '50).

Note: (see the claims 1,3,4,14,27,40,41,42,53,and 54 of copending Application No. 10/804,550).

With respect to claims 1,3,4,14,27,40,41,42,53,and 54, the claims 1, 8, 15, 22, 29, and 31 of the copending application number 10/804,555 disclose all the subject matter of the claimed invention with the exception of transmission allocation in a communication network. Karbowski et al. from the same or similar field of endeavor teaches a provision of the transmission allocation (see column 6 lines 19-27). Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the transmission allocation as taught by Karbowski et al. in the communication of the Claims 1,8,15,22,29,and 31 of the copending application number 10/804,550. The transmission allocation can be modified/implemented into the Claims 1,8,15,22,29,and 31 of the copending application number 10/804,550 since Claims 1,8,15,22,29,and 31 of the copending application number 10/804,550 do teach a controller for ring topology. The motivation for using the transmission as taught by Karbowski et al. in the communications network of Claims 1,8,15,22,29,and 31 of the copending application number 10/804,550 being that it reduces congestion traffic.

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3. Claims 1,8,15,22,29,and 31 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,9,17,25,and 33 of copending Application No. 10/804,528 in view of Karbowski et al.

Note: (see the claims 1,9,17,25,and 33 of copending Application No. 10/804,528).

Applicant's Claims 1,8,15,22,29,and 31 merely broadens the scope of the claims 1,9,17,25,and 33 of copending Application No. 10/804 by eliminating the elements: communicate a second token to the next node authorizing secondary transmissions on the authorized data channel. It has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re karlson, 136 USPQ 184 (CCPA). Also note Ex Parte Raine, 186 USPQ 375 (bd. App. 1969); omission of a reference element whose function is not needed would have been obvious to one skilled in the art.

With respect claims 1,8,15,22,29,and 31, the claims 1,9,17,25,and 33 of copending Application No. 10/804 disclose all the subject matter of the claimed invention with the exception of transmission allocation in a communication network. Karbowski et al. from the same or similar field of endeavor teaches a provision of the transmission allocation (see column 6 lines 19-27 ). Thus, it would have been obvious to the person of ordinary skill in the art at the time of the invention to use the transmission allocation as taught by Karbowski et al. in the communication of the claims 1,9,17,25,and 33 of copending Application No. 10/804 The transmission allocation can be modified/implemented into the claims 1,9,17,25,and 33 of copending Application No. 10/804 since the claims 1,9,17,25,and 33 of copending Application No. 10/804 do teach

a controller for ring topology. The motivation for using the transmission as taught by Karbowski et al. in the communications network of the claims 1,9,17,25,and 33 of copending Application No. 10/804 being that it reduces congestion traffic.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 6-8, 13-15, 20-22, and 27-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Olshansky et al. (U.S. Patent No. 5418785).

- With respect to claims 1, 15, and 22, Olshansky teaches an optical node (e.g. stations in fig. 1) comprising: a data interface operable to receive data for transmission to a plurality of destinations (e.g. Fig. 3 with RX and TX); a buffer operable to store the data (e.g. buffer in fig. 7); a transmitting unit operable to couple to an optical transmission medium having a plurality of data channels and to selectively transmit optical signals on the data channels (e.g. block 722 in Fig. 7 transmit data to channels); and a controller operable to receive a token authorizing transmission on one of the data channels (e.g. the control manager 710 in Fig. 7), to determine a transmission allocation, wherein the transmission allocation represents an amount of time that the authorized data channel may be utilized to transmit the data (e.g. col. 3, lines 5-24 where the node determines the timeslot for transmit; the timeslot considers as the amount of time that

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authorized data to transmit), to determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination, and to transmit the data on the authorized data channel in accordance with the transmission allocation and the destination allocation (e.g. when the node receives the token receives and determine the address; see col. 13, lines 19-22).

- With respect to claims 6, 13, 20, and 27, Olshansky teaches wherein the buffer is further operable to store the data in a plurality of virtual queues, each virtual queue associated with a unique destination node, and wherein the controller is further operable to utilize a weighted round robin scheduler to determine which virtual queue to service (the buffer in Fig. 7 for store data and it is inherently to know that there are plurality queues in it).

- With respect to claims 7, 14, 21 and 28, Olshansky teaches wherein the controller is further operable to generate a transmission control message identifying a destination node and the authorized data channel, to communicate the transmission control message to a next node, and to communicate the token to the next node (e.g. primary node with network manager).

- With respect to claim 8, Olshansky teaches an optical communication system comprising: a plurality of optical communication nodes (e.g. in Fig. 1 there are plurality nodes); optical transmission media interconnecting the optical communication nodes, the optical transmission media having a plurality of data channels (e.g. links in Fig. 1); and a plurality of logical tokens corresponding to the data channels (e.g. the tokens in Fig. 2);

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wherein each of the optical communication nodes is operable to: receive data for transmission to a destination one of the optical communication nodes (e.g. Fig. 7 block 714 receives data for transmitting to network); receive one of the logical tokens (e.g. the nodes receive token from control channel); identify one of the data channels associated with the logical token (col. 12, lines 63-65); determine a transmission allocation, wherein the transmission allocation represents the amount of time that the identified data channel may be utilized to transmit the data (see col. 12, lines 67-68); determine a destination allocation, wherein the destination allocation represents a proportion of the transmission allocation that may be utilized to transmit the data to a particular destination (col. 13, lines 4-6); and transmit the data to the destination optical communication node using the identified data channel in accordance with the transmission allocation and the destination allocation (col. 13, lines 7-9).

***Allowable Subject Matter***

6. Claims 29-31 are allowed.
7. Claims 2-5, 9-12, 16-19, and 23-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

8. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUC H. TRAN whose telephone number is (571)272-3172. The examiner can normally be reached on M-F (8-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHI PHAM can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PHUC H TRAN/  
Examiner, Art Unit 2616